



## BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

### Advisory Opinion No. 04-013

The ethics law generally prohibits a public employee from engaging in outside employment without Ethics Commission approval. A public employee is defined as including “any other person providing services without compensation to a County agency<sup>1</sup> if that person: (A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or (B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.” A volunteer firefighter asks whether he must obtain approval to engage in outside employment. The Commission concludes that approval is not necessary because the employee’s current duties do not put him within the ambit of this definition.

The ethics law provides that, with certain exceptions not relevant here, “a **public employee** must not engage in any other employment unless the employment is approved by the Commission.” § 19A-12(a)(1) (emphasis added). The term “public employee” means

- (1) the County Executive and each member of the County Council;
- (2) any person employed<sup>2</sup> by a County agency, including the director of the agency;
- (3) any person appointed by the County Executive or County Council to a board, commission, committee, task force, or similar body, whether or not:
  - (A) the person is compensated for serving on the body; or
  - (B) the body is permanent or temporary;
- (4) any member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners; and
- (5) **any other person providing services without compensation to a County agency if that person:**
  - (A) **exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or**
  - (B) **has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.**

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<sup>1</sup> Under § 19A-4(a) of the ethics law, “agency or County agency” includes “each independent fire department or rescue squad that receives funds from the County or uses property owned by the County.”

<sup>2</sup> An employer is any person who pays or agrees to pay compensation for services rendered and employment or employ means engaging in an activity for compensation. Compensation means any money or thing of value, regardless of form, including the sale or delivery of tangible or intangible property, that an employer pays or agrees to pay for services rendered. §§ 19A-4 (d), (f), & (g).

§ 19A-4(m) (emphasis added).

Before its amendment by Bill 33-89, effective April 26, 1990, the Commission read the ethics law to apply to all volunteer firefighters. The legislative history shows that the County Council, mindful of the Commission's interpretation, intended to narrow that scope of coverage in Bill 33-89. Legislative counsels' January 16, 1990, memorandum to the Council on the day it enacted Bill 33-89, explained how the new bill would exempt most volunteer firefighters from the ethics law.

'Public employee' (14/21 - 15/15) includes every official and employee who is now subject to the ethics law, except that the coverage of volunteers (15/8-14) was narrowed to exclude any volunteer who does not exercise any responsibility over publicly-funded programs, procurement, or contract administration and who does not have access to certain confidential information. This amendment exempts most volunteer firefighters. The Ethics Commission interprets the current law to cover all volunteer firefighters. The main practical effect of covering volunteers is to require Ethics Commission approval of their 'outside' employment (*i.e.*, their paying job).

To similar effect is the February 20, 1990, memorandum from the County Attorney to all department heads advising them of the changes brought on by Bill 33-89.

In addition to employees of a County agency, the Ethics Law applies to . . . volunteers providing services to a County agency if the volunteer exercises responsibility for government funded programs or procurement or has access to confidential information. The **present** law applies to **all** volunteers including all volunteer firefighters. (Emphasis in original.)

The definition of a public employee subject to the ethics law has remained unchanged since Bill 33-89. Thus, a volunteer firefighter is not subject to the ethics law except when he or she (A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency or (B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.

While the typical volunteer firefighter will not fall within this definition, some will. The Commission understands that most of the County's fire corporations receive monthly funding allotments from the County to pay for various station operations, including equipment, food, training, fuel, and insurance. If a volunteer firefighter exercises responsibility for the management of these funds (perhaps as a corporate officer), then he or she might fall within the ambit of this definition. Also, if a volunteer firefighter has access to confidential information related to a County procurement (perhaps as a member of a design or selection committee), then he or she might fall within the ambit of this definition.

In the present case, the volunteer firefighter states that he exercises no such responsibility. Thus, there is no need for Ethics Commission approval of this person's outside employment.

February 22, 2005

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Date

FOR THE COMMISSION:

*Elizabeth K. Kellar*

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Elizabeth K. Kellar, Chair